

SENATE BILL NO. 56

INTRODUCED BY KEENAN

BY REQUEST OF THE LEGISLATIVE FINANCE COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT LIMITING THE PERIOD OF CONFINEMENT FOR A PERSON FOUND NOT GUILTY BY REASON OF MENTAL DISEASE OR DEFECT; REQUIRING THE COURT TO DETERMINE THE MAXIMUM PERIOD OF CONFINEMENT AND TO MAKE SPECIFIC FINDINGS REGARDING VICTIMS; AND AMENDING SECTIONS 46-14-214 AND 46-14-301, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-14-214, MCA, is amended to read:

"46-14-214. Form of verdict and judgment -- determination of maximum period of confinement -- victim findings. (1) When the defendant is found not guilty of the charged offense or offenses or any lesser included offense for the reason that due to a mental disease or defect the defendant did not have a particular state of mind that is an essential element of the offense charged, the verdict and the judgment must state that reason.

(2) The court shall determine on the record the charged offense or offenses or any lesser included offense for which the person otherwise may have been convicted and the maximum sentence that the defendant may have received. If there is more than one offense charged, the maximum sentence is limited to the longest SINGLE sentence from all charged offenses.

(3) The court shall make specific findings regarding whether there is a victim of the crime for which the defendant is found not guilty and, if so, whether the victim wishes to be notified of any conditional release, discharge, or escape of the defendant.

Section 2. Section 46-14-301, MCA, is amended to read:

"46-14-301. Commitment upon finding of not guilty by reason of lack of mental state -- hearing to determine release or discharge -- limitation on confinement. (1) When a defendant is found not guilty for the reason that due to a mental disease or defect the defendant could not have a particular state of mind that is an essential element of the offense charged, the court shall order a predisposition investigation in accordance

1 with 46-18-112 and 46-18-113, which must include an investigation of the present mental condition of the
2 defendant. If the trial was by jury, the court shall hold a hearing to determine the appropriate disposition of the
3 defendant. If the trial was by the court, the court may hold a hearing to obtain any additional testimony it
4 considers necessary to determine the appropriate disposition of the defendant. In either case, the testimony and
5 evidence presented at the trial must be considered by the court in making its determination.

6 (2) The court shall evaluate the nature of the offense with which the defendant was charged. If the
7 offense:

8 (a) involved a substantial risk of serious bodily injury or death, actual bodily injury, or substantial
9 property damage, the court may find that the defendant suffers from a mental disease or defect that renders the
10 defendant a danger to the defendant or others. If the court finds that the defendant presents a danger to the
11 defendant or others, the defendant may be committed to the custody of the director of the department of public
12 health and human services to be placed in an appropriate mental health facility for custody, care, and treatment.
13 However, if the court finds that the defendant is seriously developmentally disabled, as defined in 53-20-102,
14 the prosecutor shall petition the court in the manner provided in Title 53, chapter 20.

15 (b) charged did not involve a substantial risk of serious bodily injury or death, actual bodily injury, or
16 substantial property damage, the court shall release the defendant. The prosecutor may petition the court in the
17 manner provided in Title 53, chapter 20 or 21.

18 (3) A person committed to the custody of the director of the department of public health and human
19 services must have a hearing within 180 days of confinement to determine the person's present mental condition
20 and whether the person must be discharged or released or whether the commitment may be extended because
21 the person continues to suffer from a mental disease or defect that renders the person a danger to the person
22 or others. The hearing must be conducted by the court that ordered the commitment unless that court transfers
23 jurisdiction to the district court in the district in which the person has been placed. The court shall cause notice
24 of the hearing to be served upon the person, the person's counsel, the prosecutor, and the court that originally
25 ordered the commitment. The hearing is a civil proceeding, and the burden is upon the state to prove by clear
26 and convincing evidence that the person may not be safely released because the person continues to suffer from
27 a mental disease or defect that causes the person to present a substantial risk of:

28 (a) serious bodily injury or death to the person or others;

29 (b) an imminent threat of physical injury to the person or others; or

30 (c) substantial property damage.

(4) According to the determination of the court upon the hearing, the person must be discharged or released on conditions the court determines to be necessary or must be committed to the custody of the director of the department of public health and human services to be placed in an appropriate mental health facility for custody, care, and treatment. The period of commitment may not exceed the period for which the defendant could be incarcerated if the defendant had been convicted and received the maximum sentence for the crime with which the defendant was charged, as provided in 46-14-214 MAXIMUM SENTENCE DETERMINED UNDER 46-14-214(2). At the time that the period of the maximum sentence expires, involuntary civil commitment proceedings may be instituted in the manner provided in Title 53, chapter 21.

(5) A professional person shall review the status of the person each year. At the time of the annual review, the director of the department of public health and human services or the person or the representative of the person may petition for discharge or release of the person. Upon request for a hearing, a hearing must be held pursuant to the provisions of subsection (3)."

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